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Moresby A. White

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Murder Trials in England

IT IS commonly said that the principal difference between the American system of murder trials and the English system is to be found in the promptitude with which the accused person is arrested and brought to trial, the short time the trial takes, the immediate sentence and execution consequent thereon.

In all criminal jurisprudence the main object according to most of the eminent writers upon criminology is to deter other persons from committing crime. The chief aim of criminal justice is to maintain a standard which will frighten other people from acts of crime. It is conceded that fear of the consequence is the main deterrent influence in the human mind.

The secondary aim of criminal justice is to punish the offender. In every case punishment ought to follow quickly upon the commission of the offense.

The preliminary step before trial in America is usually a procedure before the Grand Jury or an inquiry before a magistrate. In either proceeding the prosecution frequently do not go into the whole of the case. They do not call all the witnesses. Especially is this so before the Grand Jury where only a *prima facie* cause has to be established against the accused and upon that being proved he can be put upon his trial for willful murder. It follows that in many cases a man may be tried without knowing beforehand all the facts which are going to be adduced against him. He may only know about half the witnesses and half the proof which will be given on his trial, consequently he may be unable to rebut evidence which if he had more time, more opportunity, he would be able to deal with.

In England proceedings before a Grand Jury are practically obsolete as a preliminary step in a murder case. The invariable step taken is an inquiry before a magistrate who is usually a barrister of at least twenty years' experience in trial work before he is appointed, very competent in the rules of evidence and experienced in the criminal law. In the magistrate's court the prosecution usually calls all its witnesses so that the accused knows what the case is against him. A copy of the evidence given, called the depositions of the witnesses, is available to the accused. Upon trial, should any fresh evidence be tendered by the prosecution the practice is to give a copy of the proposed evidence to the accused in the shape of a written proof or statement of what the new witness is going to say. If this is omitted the adducing of such new testimony may

be disallowed by the judge at the trial. The object of the practice is to prevent the accused being taken by surprise. Anything in the nature of an unfair advantage in the prosecution of the prisoner is severely repressed.

The final trial in an English case usually happens within a month of the apprehension of the offender and it takes place at a circuit or assize court before a judge who is expressly trained through many years' experience at the Bar as a trial lawyer in every kind of case, probably twenty-five years, before he sits as a Judge in murder cases.

It may be observed that the difference with which justice follows upon the commission of a crime in England as compared with America is due to a more highly organized police force and the smaller area within which it has to act. The object of the police in both countries is far more to prevent crime than to catch an offender. In England the very presence of a policeman has an invaluable deterrent effect on the criminal mind. When a murder has been committed the detection of the murderer is usually assigned to the detective department which in England is known as the Scotland Yard division. This includes some of the cleverest and most astute minds in the country, acting within a small but very crowded area. They seldom fail in finding any person who is wanted. The difficulties of the detective force in America are increased by a much larger area of activity; also by the easy means of transportation. Moreover in America high class mind naturally finds better payment in other walks of life. This reflects on the probity of the police force as more likely to take "graft".

Once the man wanted is found the police take charge of him and he is brought up before the magistrate. The case is heard at full length. If the evidence is sufficient to warrant it he is committed for trial.

At the trial two main differences are obvious. First the impaneling of the jury, secondly the powers of the judge. In America objections to a jury are common and sometimes take two days. In England an objection to any juryman is very rare because they are all drawn from the same class of the community, they all have the same national outlook and much the same view on domestic questions. They are more law-abiding from inveterate custom, they have an inherited regard for justice and administer it regardless of any favor or any fear for the accused person. The fact that a juryman has a personal interest in the accused would make him all the more careful to avoid finding any verdict in favor of that

person. The average English jury will convict in most cases. With the average American jury most of these rules do not apply, for racial reasons and because individuals composing the jury have not the inherited tendencies of the British jury.

The order of a trial differs slightly in England from the American practice. In England counsel for the prosecution opens the case with a full statement of the facts and of any law which may be applicable. It is a solemn and dignified address. Then the witnesses for the prosecution are called, examined and cross-examined by the prisoner's counsel. Here arises a practical distinction. Very few objections are ever taken by counsel to the adducing of testimony or to the questions put. The judge intervenes if necessary. It is a long established customary rule which prevents counsel from trying to use any evidence which he knows the judge will stop. Counsel for the defense allows the other side to use leading questions in order to bring the witness right up to the important parts of his evidence. Counsel for the prosecution takes the witness and recites his name, address and qualifications and leads him to the date and the place and generally through all introductory matters up to the disputed points. Then he has to be careful—he must not lead and the questions are scrupulously watched. But this leading on non-essentials saves a great deal of time when one has a number of witnesses as is usual in a murder case. In cross-examination much latitude is allowed, far more than in American practice.

When the evidence for the prosecution is finished and the case closed, then the prisoner's counsel either submits that there is no case to go to the jury or he addresses the jury and makes his speech. He then calls his witnesses and his case is conducted in the same way as the prosecution's case. At the close of his case he has another right to address the jury. It is this speech which is usually relied upon by a good advocate for an acquittal. In many cases a counsel will give only a short address in opening his case. Sometimes he gives none at all and relies entirely upon his closing address to the jury.

Then comes the last speech of the prosecution to the jury reviewing all the facts of the case. Finally the judge sums up. It will be noted that the American practice allows the prosecution to open his case by argument or speech and when the whole of the evidence on both sides is in, he has a right to make a second speech or argument upon the case, and then comes the argument or speech of the prisoner's counsel, and finally the closing argument or speech of the prosecution, so that he gets three chances whereas in England he

has only two. Again in America sometimes two counsel are allowed to address the jury for the same side, but in England this is never done. One counsel only may make the speeches to the jury. He may have the assistance of another counsel to examine or cross-examine witnesses but one counsel only conducts the case. This again tends to expedite matters.

Another reason for the greater length of an American trial is the class of legal mind trying the case. Too often the attorney is a young man of little experience without any great background, educational or otherwise; he is on a par with an ordinary country attorney, or solicitor, in England who could get along before a magistrate but would be outclassed in an Assize Court. The highly trained barrister in England conducts a murder case. His background of inherited values, of acquired knowledge, of a legal caste, is designed by the increasing wisdom of many generations to invest him with the right spirit, to discharge the most solemn duty of a citizen, namely to try his fellow citizen for his life.

The American lawyer will challenge a jury because he has twenty challenges; he uses all his powers. He has a right to object to any testimony as irrelevant and immaterial, he uses the right on all occasions without much regard to the waste of time or to the best interests of his client, and often regardless of whether the objection is well taken or not. He wants to get it down on the record; in case of appeal the record becomes very important. In English practice counsel has similar rights but rarely if ever uses them; the record is seldom of any practical value. A strong Bench looks after improper evidence and watches over the jury; its counterpoise is a strong Bar.

The judge's summing up is governed by his powers, which in England are very wide. All questions of law are decided by him and he tells the jury, "Gentlemen you ought to take the law from me." For example, the admissibility of testimony. "I rule that this evidence as tendered is admissible in law. It is for you to say what in fact its value may be. You are the sole judges of the facts and of their value and you are to decide what weight to attach to this evidence after it has been legally given." The rule as to *corpus delicti* is not so strict as in America nor is it known under that name. In England, if in a murder case no body has been found it would almost be impossible to sustain a preliminary case before a magistrate. Where human bones are found as in the Crippen case, then it is a question of fact for the jury to decide whether some-

body has been murdered and whether the party is the person named in the indictment.

The result in English law is practically the same as in America but it is arrived at in a different way; in most cases more expeditiously. The judge will intervene and stop the case if he thinks that in law he ought to rule that there is insufficient evidence against the accused. This is his duty, whereas in America such a question may be left to the jury.

In the ordinary case where there are no serious legal points, and that is the usual murder trial, the judge in America reads a number of instructions on points of law to a jury who are not trained men, and who are quite ignorant of all the things he is reading. He does not assist upon the different facts set before them, upon the conflicting views of these facts, upon the disputed arguments of the various counsel in the case, all of which have filled the minds of the jury with doubt, hesitation and perhaps distrust. On all these matters where the jury most want impartial guidance and help the American judge is not allowed to assist them.

In England the judge is impartial, is highly trained in the rules of evidence and in the value of statements, he has taken part as counsel in many similar trials and knows well how to weigh conflicting views of facts. His duty is to go over the evidence carefully, pointing out to the jury the important matters on each side, showing how to weigh their value, what may be said for or against any special view urged by either counsel. The judge's advice has always great weight with a jury, but if he tries to go too far, if he tries to tell them what kind of verdict they ought to find, the jury invariably take the bit in their teeth and go the other way. They like assistance but they quickly resent any dictation, consequently you hear the judge frequently say, "But after all, gentlemen, the facts are for you and it is you alone who must decide."

The judge's summing up is probably the most important part of a criminal trial in England. Any accused person has a sporting chance. There is always an element of luck and perhaps some tendency to show the sporting proclivities of the average English juryman in a murder trial. The expression is current of a summing up, "He gave the accused a good run for his money", meaning that he gave the jury a chance to acquit if there was any fair way out for the prisoner.

An American jury often takes a long time to agree upon the right penalty to affix; they usually have three choices, in some states more. It is not the question of guilty or not guilty which delays a

verdict, but the question, what shall be the punishment. This differs from English practice.

The jury retire and usually take a very short time, seldom more than an hour. And immediately upon the finding of the verdict of "Guilty" sentence is pronounced. The solemnity of sentence in an English Assize Court is very marked. The scarlet and ermine robes of the judge which he always wears in criminal trials, the sheriff on his right-hand side on the bench, arrayed as a rule in some military uniform, on his left-hand side the chaplain, vested in ecclesiastical attire. These represent the historic court of the Norman times. In the center the King, represented by the judge, on the one side the church, the bishop as it used to be, today the chaplain; on the other side the shire reeve, now the sheriff, and the great men of the county all assembled to see that justice is done. The wording of the sentence of death is furnished by tradition and upon the judge's wig is placed the black cap whilst sentence of death is pronounced, and upon its close the chaplain rising in his seat, says, "Amen". The prisoner is then removed from the dock, down stairs into the cells, conveyed to the prison and the execution takes place usually within two or three weeks.

The convicted man has a right of appeal to the Criminal Court of Appeal upon any points of law, but such appeals are very rarely successful. As may be seen the strict observance of the legal points in the conducting of the trial leaves but little chance for any serious error which would quash a conviction.

The sentence of death in America cannot be pronounced immediately upon the verdict. The judge as a rule has to allow not less than two days to elapse before the convict is brought up for sentence. The dramatic effect of punishment immediately following on the conviction of murder is of great value in the community as a deterrent to other criminals. The picture to the eye which remains in the mind after viewing sentence passed in an American court shows but little difference between a sentence for robbery and a sentence of death. In an English court the difference is very marked and remains implanted in the mind of the observer.

The democrat may declare against all external show but it is only through external effects that human beings can evince feelings, only thus can the mind of the ignorant be impressed.

Moreover, a long delay between sentence and the execution is frequent in America, through appeals, arrest of judgment, and other artifices open to a well paid lawyer. This does much to destroy the deterrent effect of a sentence of death.

Insanity as defense in murder cases is seldom raised in England because the practice differs from that in America. If a man pleads not guilty and raises as a defense insanity, the verdict is "guilty but insane", that is to say, he practically does not contest the fact that he committed the murder but alleges that he was insane when he did it and that the main evidence of his insanity is the fact that he committed the murder. Hence in a murder trial the defense of insanity is known as "the last refuge of the defeated advocate."

In America if a man is really insane there is no need for him to go to trial. He can have the question of his insanity tested by doctors sent by the State authorities, the District Attorney or other official and if such medical experts find the man is insane he is sent to an insane asylum and stays there until he may or may not recover. There is no conviction. Further, a man may upon being charged with murder, through his counsel plead that he is so insane that he cannot plead or properly present his defense and then the trial by jury will solely decide whether he is sufficiently sane to be tried upon the charge of murder or not. The practice upon this last point is the same in England and America. In each country the raising of a defense of insanity in a murder trial is looked upon with great suspicion. In America it can be done together with a denial of guilt of the alleged crime. In England this cannot be done and if counsel for the prisoner tries to run insanity as a defense together with not guilty on the facts he is quickly stopped by the judge and told that such questions are not admissible, and he would not be allowed by the judge to suggest to the jury that the accused was irresponsible if he argues at the same time that the accused did not commit the crime. In America where insanity is thus raised as a defense on a murder trial, ninety per cent of such defenses are unsuccessful. In England probably ninety per cent would be successful because insanity is never raised unless there is a very good chance of proving the case.

One word as to newspapers and murder trials. The tendencies of our American papers to discuss a murder before the trial is well known and it is generally agreed that this practice is unfair to the accused and does great harm to the mind of the people. Obviously the detection of crime and the discussion of evidence in a case yet to be tried is not part of a newspaper's business. The law as to contempt of court, which means an interference with the due process of justice, is rigidly enforced in England against newspapers and all others. Unfortunately in many states in America where the judges are elected by popular vote they have far too much to fear from

the influence of a newspaper having wide circulation. Consequently any attempt to bring such a newspaper before a judge for contempt and to have the editor punished by fine or imprisonment would be almost impossible. Whereas in England if a newspaper were to comment upon a murder case before the trial at the Assize Court it would assuredly be brought into court by proceedings for contempt and the editor would be heavily fined. A newspaper is no more fitted than any other self-constituted authority to investigate crime or to report faithfully and fully upon facts which may be true or false as to any alleged crime before the proper trial. The lawful authority created by the People is the only one recognized in England, whereas in America the self-constituted authority of the Press has usurped functions peculiar to the office of Justice and has abused those functions. The enforcement by the Bench of strict impartiality in all newspaper notices of criminal cases especially before trial can only come from an independent Bench, strong and fearless. One of the main causes of challenges to juries in America is the pernicious influence of the Press on the minds of the People.

In an English trial there is but little sentimentality, the unwritten law as a defense is never allowed, matters arising out of the youth or sex of the accused are set aside for the consideration of the Pardoning Power, namely the King acting through his responsible Minister, the Home Secretary.

The American practice was derived from the procedure used in England during the eighteenth century, which was cumbrous, slow, often working so unfairly against the accused that juries were prone to take the law into their own hands and acquit. The visible defects in the American system are all to be found in the old English practice. But the modern criminal jurisprudence of England has enlarged the rights of the accused, sometimes too generously, has cut out most of the useless forms and the technical objections, retaining the ceremonial which is of real impressive value in an ancient community. A murder trial in England is characterised by a traditional solemnity in making the inquest upon the shedding of blood, it is conducted in an Assize Court which still bears the marks of Saxon and Norman times, it is today perfected by the skill of the mind and ameliorated by the dictates of the heart into a humane instrument for the speedy and impartial administration of Justice.

A. Moresby White.